

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

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|------------------------|---|--|
| OSCAR PENA, |) | ORDER & MEMORANDUM DECISION |
| |) | |
| Plaintiff, |) | Case No. 2:12-CV-431 DN |
| |) | |
| v. |) | District Judge David Nuffer |
| |) | |
| SALT LAKE CITY et al., |) | |
| |) | |
| Defendants. |) | |

Plaintiff, Oscar Pena, filed a *pro se* prisoner civil rights complaint.¹ Plaintiff now moves for appointed counsel and an extension of time in which to file an amended complaint.

Plaintiff has no constitutional right to counsel.² However, the Court may in its discretion appoint counsel for indigent inmates.³ "The burden is upon the applicant to convince the court that there is sufficient merit to his claim to warrant the appointment of counsel."⁴

When deciding whether to appoint counsel, the district court should consider a variety of factors, "including 'the merits of the litigant's claims, the nature of the factual issues raised in the claims, the litigant's ability to present his claims, and the

¹See 42 U.S.C.S. § 1983 (2012).

²See *Carper v. Deland*, 54 F.3d 613, 616 (10th Cir. 1995); *Bee v. Utah State Prison*, 823 F.2d 397, 399 (10th Cir. 1987).

³See 28 U.S.C.S. § 1915(e)(1) (2012); *Carper*, 54 F.3d at 617; *Williams v. Meese*, 926 F.2d 994, 996 (10th Cir. 1991).

⁴*McCarthy v. Weinberg*, 753 F.2d 836, 838 (10th Cir. 1985).

complexity of the legal issues raised by the claims.'"⁵

Considering the above factors, the Court concludes here that, at this time, Plaintiff's claims may not be colorable, the issues in this case are not complex, and Plaintiff is not at this time too incapacitated or unable to adequately function in pursuing this matter. Thus, the Court denies for now Plaintiff's motions for appointed counsel.

IT IS HEREBY ORDERED that Plaintiff's motions for appointed counsel are DENIED⁶; however, if, after the case develops further, it appears that counsel may be needed or of specific help, the Court will ask an attorney to appear pro bono on Plaintiff's behalf.

IT IS FURTHER ORDERED that Plaintiff's motions for an extension of time in which to file an amended complaint are GRANTED.⁷ Plaintiff has thirty days from today to file his amended complaint.

DATED this 15th day of August, 2012.

BY THE COURT:

S/David Nuffer

JUDGE DAVID NUFFER
United States District Court

⁵*Rucks v. Boergermann*, 57 F.3d 978, 979 (10th Cir. 1995) (quoting *Williams*, 926 F.2d at 996); *accord McCarthy*, 753 F.2d at 838-39.

⁶(See Docket Entry #s 8 & 11.)

⁷(See Docket Entry #s 9 & 10.)